IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5535 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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NASIR USMAN SHAIKH THRO COUSINBROTHER-JABIR DILAVAR PATHAN - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,
MS BHAVIKA KOTECHA ASSTT GOVERNMENT PLEADER for Respondent(s) :1-3

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 15/10/2007

ORAL JUDGMENT :

1. By the present petition under Article 226 of the Constitution, petitioner has sought the relief of order dated 08.02.2007 of his detention being set aside. That impugned order dated

08.02.2007 is issued by Police Commissioner, Surat in exercise of his powers conferred under the provisions of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) on the basis that the petitioner was found to be repeatedly indulging in anti-social activity of bootlegging and an offence being III-C.R.No.5008 of 2007 under the Prohibition Act was registered on 06.01.2007 against the petitioner in D.C.B. Police Station of Surat in which 480 bottles of liquor is stated to have been recovered from him. According to the grounds of detention supplied with the impugned order, even as the aforesaid offence was being investigated, other actions under the Prohibition Act were not possible and alcohol being injurious to health, there was likelihood of danger to public health on account of consumption of illicit liquor in which the petitioner was dealing. It is further stated that possibility of the petitioner continuing in anti-social activities could not be denied and hence it was found to be necessary to detain the petitioner after considering the documents and statements which were relied upon and supplied to the petitioner.

2. Even as the present petition was admitted on 01.03.2007 and Rule was made returnable on 11.5.2007 and an affidavit-in-reply of the detaining authority was ready and executed on 25.5.2007, it was submitted to this court and copy thereof supplied to the petitioner only on 12.10.2007 when the matter was taken up for final hearing. It is stated in that affidavit, *inter alia*, that *prima facie* involvement of the petitioner was established in the offence registered against him. It is further stated: "*5.....I say that in the present case, amongst the relevant materials, I have carefully examined the documents relating to the one case registered against the detenu and from those materials, it is clear that the detenu falls within the definition of "boot-legger" as defined u/s.2(b) of the PASA Act. Therefore, on carefully scrutinising, examining and considering the materials placed before me including the papers pertaining to the above cases and after applying my mind to the facts of the case, I came to the conclusion that the detenu is dealing in illegal liquor business and he is disturbing the public order, public peace and public health and it is likely that continuance of his anti-social and boot-legging activities may cause grave or wide-spread danger to life, property and public health. Therefore, after subjectively satisfying*

that the anti-social and boot-legging activities of the detenu cannot be curbed or prevented immediately by resorting to less drastic remedy of taking action under the ordinary law, as a preventive measure, I have passed the order of detention against the detenu under the PASA Act with a view to immediately prevent him from continuing such illegal, anti-social and boot-legging activities which are prejudicial to the maintenance of public order and the said order is passed with full application of mind and in compliance and in consonance with the provisions of the PASA Act as well as the Constitution of India and the said order is legal, valid and proper". While arguing on the basis of the said affidavit, learned A.G.P. Ms.Bhavika Kotecha fairly conceded that the co-detenu detained under identical order passed on the same grounds and material was already released upon the order of detention being set aside by this Court by its order dated 24.09.2007 in Special Civil Application No.9079 of 2007. It was also fairly conceded that neither any distinguishing feature from that case nor any additional arguments were available for the respondents.

3. In the above facts, it was sought to be argued on behalf of the respondents that danger

to public health caused by the activity of bootlegging by the petitioner substantiated the assumption of likelihood of public order being adversely affected and, for that reason, the subjective satisfaction about the necessity of preventing the petitioner from acting in any manner prejudicial to the maintenance of public order and the impugned order directing his detention were legal and justified.

4. As held by this court in ***Amarbhai Kanjibhai Nayak v. Commissioner of Police, Ahmedabad City & Ors. [1993 (3) G.L.R. 2703]*** and in ***Sohanlal Surajaram Visnoi v. State of Gujarat [2004 (2) G.L.R. 1051]***, solitary incident of violation of prohibition law, normally, without anything more, would not be a problem to the maintenance of public order and, for such solitary incident, no person can be detained under the Act. It was also seen from analysis of the provisions of sub-section (4) of section 3 and the Explanation appended thereto that the presumption of likelihood of public order being adversely affected could arise, if danger were caused to life or public health, but such danger has to be grave or widespread for the mandatory presumption of likelihood of public order being adversely affected. In the facts of the present case, nothing from the material on record could

substantiate or justify the presumption of grave or widespread danger to life or public health and hence, the presumption of likelihood of public order being adversely affected could not have been legally availed by the detaining authority for the purpose of arriving at the subjective satisfaction.

5. Therefore, in the facts and circumstances, the impugned order dated 08.02.2007 of preventive detention is found and held to be unsustainable in law and set aside with the direction that the petitioner, Nasir Usman Shaikh, shall be set at liberty forthwith unless required to be detained in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)